



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)Nos.6748, 6750 and 6751 of 2020

and

W.M.P(MD)Nos.6123, 6125, 6129, 6131, 6130 & 6132 of 2020

W.P(MD)No.6748 of 2020

Malaiyappan

... Petitioner

vs.

The District Manager,
TASMAC (Tamilnadu State Marketing Corporation Ltd.,)
Karur District.

... Respondent

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned orders passed by the respondent in Na.Ka.C.V.6/204/2020, dated 21.05.2020.

W.P(MD)No.6750 of 2020

Senthil

... Petitioner

vs.

The District Manager,
TASMAC (Tamilnadu State Marketing Corporation Ltd.,)
Karur District.

... Respondent

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned orders passed by the respondent in Na.Ka.C.V.6/204/2020, dated 21.05.2020.

W.P(MD)No.6751 of 2020

Mahamuni

... Petitioner

vs.

The District Manager,
TASMAC (Tamilnadu State Marketing Corporation Ltd.,)
Karur District.

... Respondent

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned orders passed by the respondent in Na.Ka.C.V.6/204/2020, dated 21.05.2020.



For Petitioners : Mr.V.Muthukamatchi
For Respondent : Mr.H.Arumugam

COMMON ORDER

These Writ Petitions have been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned orders passed by the respondent in Na.Ka.C.V.6/204/2020, dated 21.05.2020.

2.The learned counsel appearing for the petitioners would submit that the petitioners are working as Supervisors in various TASMAL Shops. As per the existing routine procedure existed prior 23.03.2020, the closing time of the TASMAL shop was 9.00 p.m. The following day morning, the manager of the TASMAL shop or Supervisor of the TASMAL shop usually will send the closing particulars of the quantity of the liquor items in the prescribed message format to the District Manager and consequently remitted corresponding collection amount to the concerned bank on the following day. That being the situation, the State Government issued the emergent instruction on 23.03.2020 to close the TASMAL shop on 24.03.2020 at 6.00 p.m., while so smelling continuous lockdown to be imposed by the Central Government from 24.03.2020 onwards, huge number of the customers well in advance intended to purchase the liquor assembled at 4.30 p.m., onwards. So there was a huge crowd and huge sale between 5.00 to 6.00 p.m., the jurisdiction investigation police officer directed to close the shop even before calculating the number of bottles sold and also before counting the currency notes after closing hours i.e., on 23.03.2020 at 6.00 p.m. As per the oral instruction of the respondent to furnish the approximate particular of the sale, the petitioners disclosed the approximate sales particulars of the sold items of the bottles on 24.03.2020. The petitioners also informed through the phone regarding the huge sudden sale increase and the disclosure of the particulars is only approximate and remaining sales particulars to be furnished on the following working day. But the Central Government announced national wide lockdown in the midnight of 23.03.2020. So all the TASMAL shop remain closed without opening from 25.03.2020 onwards. So, they were unable to furnish the correct particulars on the following working day. They have deposited the corresponding approximate sale amount on 26.03.2020 on the account of the 25.03.2020 was holiday.

3.He further submitted that in the 2nd week of April, the District Management directed to shift the entire bottles to the nearby marriage hall and put the same in the safe custody of the District management under the Police supervision. On that day he disclosed the correct particulars of number of items sold. Subsequently, the District Management directed to pay the amount with 24% interest and 18% OST. The calculated amounts of Rs.2,36,610/-, Rs.5,76,920/- and Rs.8,28,960/- respectively were



paid as per direction.

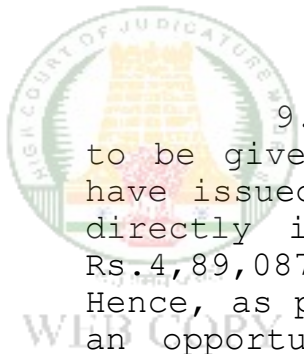
4.He would further submit that, that being the situation on 21.05.2020 the respondent passed the impugned order in his proceedings Na.Ka.C.V.6/204/2020 directing us to pay further amount of Rs.1,39,600/-, Rs.3,40,383/- and Rs.4,89,087/- respectively as shortage amount under the TASMAC Code of Prevention and Detection of fraudulent Acts in Tamilnadu State Marketing Corporation Limited-2014 (The Code) (herein after called Code 2014) Rule 7.I.XIV and also directed to furnish the explanation for taking another disciplinary action. The District Management passed the impugned order as if they have committed the shortage in disclosing the correct sales particulars which was against the peculiar circumstances of the handling of situation arose on 24.03.2020.

5. The learned counsel for the petitioners further submitted that without giving any prior notice, the respondent has passed the penalty order. Hence, the petitioners have filed the present writ petition for the above said relief.

6. The learned Standing counsel appearing for the respondent would submit that only penalty has been imposed and shortage amount has already been paid by the petitioners themselves on their own volition and they have not been compelled by the respondent. Only as per the prevailing rules, they have supposed to pay the penalty amount of different amounts within a period of three days in the TASMAC account No.444601010035237, Union Bank, (UBI) Branch, Karur District and thereafter, the respondent has to consider the same and pass appropriate orders.

7. Heard the learned counsel appearing for the petitioners and the learned Standing counsel appearing for the respondent and perused the materials available on record.

8.On perusal of the materials available on record, it is seen that a fine amount of Rs.1,39,600/-, Rs.3,40,383/- and Rs.4,89,087/-respectively with GST under Rule 2(c)(ii) of the Code of Prevention and Detection of Fraudulent Acts in TASMAC have been imposed on the petitioners. The Code 6(n) mandates that before imposing any punishment upon the charges proved at the enquiry, the delinquent shall be given an opportunity to make his representation against the punishment proposed to be imposed on him. The said opportunity of personal hearing has not been followed by the authorities and has directly imposed the punishment directing them to pay the amounts within a period of three days in the TASMAC Account No.444601010035237, Union Bank, (UBI) Branch, Karur District and further stated that if the same is not deposited within the said period and if no explanation is received, disciplinary action would be taken and orders would be passed on the basis of documents available in the respondent's office.



9. When the Rule says so that an opportunity of hearing has to be given before passing any order of recovery, the respondents have issued a notice alleged to be a show-cause notice wherein they directly imposed a recovery of Rs.1,39,600/-, Rs.3,40,383/- and Rs.4,89,087/-respectively without hearing the petitioners concerned. Hence, as per the said Rule, the respondents are supposed to provide an opportunity of hearing to the petitioners concerned and the impugned orders have to be set aside.

10. Accordingly, the impugned orders are set aside and the respondents can issue fresh show-cause notice to the petitioners as per the said Rules afresh, after giving opportunity of hearing to the petitioners can initiate appropriate proceedings.

11. With the above observations, all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Manager,
TASMAC, Karur District.

W.P (MD) Nos.6748, 6750 and 6751 of 2020
16.06.2020

KK(12.06.2020) 4P 2C